APPENDIX A

SUPREME COURT OF NEW JERSEY
C-293 SEPTEMBER TERM
19,151

WILLIAM J. HASER,
Petitioner,

vs.

JOAN H. WISKOWSKI, Director of the Division of Motor Vehicles, State of New Jersey,
Respondent.

ON PETITION FOR CERTIFICATION
(Filed January 28, 1982)

To the Appeli... Division, Superior Court:

A petition for certification of the judgment in A-4794-80T3 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 25th day January, 1982.

/s/ STEPHEN TOWNSEND
Clerk

APPENDIX B

N.J.S.A. 39:5-30—Suspension or Revocation of Driver's License, Registration Certificate or Nonresident reciprocity privileges

***b. Whenever a matter is presented to the director involving an alleged violation of

* * *

(4) R.S. 39:4-129 wherein the death of another occurred, the director shall issue a proposed notice of suspension or revocation of any license certificate or any nonresident reciprocity privileges held by the individual charged or issue a temporary order prohibiting the individual from obtaining any license to operate a motor vehicle in this State. A preliminary hearing shall be held on the matter within 15 days of the date that the summons was issued or the arrest made. Adjournment of such hearing upon motion by the individual shall be given only for good cause shown. The administrative law judge hearing such matter shall determine at such hearing whether there is probable cause to believe that grounds exist for suspension or revocation of the individual's license certificate. If, from the evidence, the administrative judge determines that such grounds exist, he shall immediately issue a preliminary suspension of any license certificate or any nonresident reciprocity privileges held by the individual charged or issue a temporary order prohibiting the individual from obtaining any license to operate any motor vehicle in this State. After concluding the proceeding the administrative law judge shall transmit his findings to the director. Whether or not a preliminary finding of probable cause was made at a preliminary hearing, a hearing shall be held within 45 days of the date that the summons was issued or arrest was made. * * *

APPENDIX C

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. MVH 1729-80

AGENCY DKT. NO. H0732 78571
09614

IN THE MATTER OF:
WILLIAM HASER

Record Closed: April 24, 1981. Decided: 5/11/81

Received by Agency: 5/13/81.

Mailed to Parties: 5/14/81

APPEARANCES:

Robert Cherry, Esq., for Respondent

Fred Title, Esq., for the Director of the Division of Motor Vehicles (Barry H. Evenchick, Esq., attorney)

BEFORE NOAMI DOWER-LABASTILLE, ALJ:

The Director of the Division of Motor Vehicles (Director) sent William J. Haser (respondent) notice of a proposed suspension of his driving privileges pursuant to N.J.S.A. 39:5-30, charging respondent with violations of N.J.S.A. 39:4-98 (failing to drive at appropriate speed at a curve), 4-82 (failure to drive on right half of roadway) and 4-97 (careless driving resulting in the death of Linda Lockwood. Respondent requested a hearing. The Director transmitted the matter to the Office of Administra-

tive Law for determination as a contested cause pursuant to N.J.S.A. 52:14F-1 et seq. A list of exhibits introduced at the hearing on April 24, 1981 is attached to this decision.

Motion to Dismiss

Respondent moved to dismiss on grounds that administrative delay in the case was excessive, and was fundamentally unfair. Counsel for the Director argued that the delay was caused by a shortage of deputy attorneys general to try fatal accident cases. (Since the amendment of N.J.S.A. 39:5-30, effective February 27, 1980, fatal accident cases have been subject to strict statutory time frames.) The Director is now hiring attorneys on a per diem basis to remove the backlog of old cases. Present counsel is such a per diem attorney. The leading case on this issue is *In re Arndt*, 67 N.J. 432 (1975). In *Arndt*, an implied consent case, there were two periods of administrative inaction (twenty months and ten months) in a total time of two years and eight months. I FIND the procedural facts in the present case to be:

1. Chronology
   November 14, 1978: Fatal Accident
   April 27, 1979: Notice of Proposed Suspension
   May 1, 1979: Hearing Request
   August 1, 1979: Informal Conference
   April 27, 1980: Transmitted to Office of Administrative Law
   March 6, 1981: First Hearing Date
   April 24, 1981: Adjourned Hearing Date
   May 11, 1981: Date of Initial Decision
   June 25, 1981: Approximate Date of Director's Decision

2. The longest delays were almost eleven months and nine months during which period the amended statute became effective.

3. The total time period is within a few weeks of the delay disapproved in *Arndt* but six weeks were attributable to respondent's adjournment request.

4. The major delay was attributable to the backlog of old cases resulting from the need to meet a statutory hearing deadline for new fatal accident cases on and after February 27, 1980.

I CONCLUDE that no dereliction of administrative duty similar to that highlighted in the *Arndt* case occurred in this matter. Further, the *Arndt* holding is partially supported by the statutory language of N.J.S.A. 39:4-50.4, interpreted as a directive to move promptly. *Arndt*, supra., 435. *Arndt* concerned refusal to take a breath test. The proofs were all available on the date of the incident. In the present case, investigation was necessary. As will be discussed below, the State's first witness was in a coma for three weeks and regained her memory slowly thereafter and was still doing so after the municipal court hearing on September 25, 1980. I CONCLUDE no dismissal is warranted under the circumstances.

* * *

I FIND:

1. On November 14, 1978, respondent was driving at a high rate of speed (a minimum of 40 mph in a 30 mph zone) on Scioto Drive when he lost control on a curve, skidded into the left lane of traffic for at least 100 feet, and struck a telephone pole, killing Linda Lockwood and critically injuring Susan Argenio and himself.

2. Despite the fact that he knew a week before the accident that there was a mechanical malfunction in the gear engagement, he continued to drive the vehicle. The malfunction did occur but was merely a subsidiary contributing factor to the accident.

3. Respondent is unmarried and works as a mechanic nights and as a plumber's assistant during the day, but the plumber whom he assists provides transportation from job to job a good part of the time.

4. After a municipal court conviction of reckless driving respondent completed a driver training program successfully but his abstract records one non-point conviction and a possibly nonculpable accident in 1980.

* * *

I CONCLUDE that respondent's license should be suspended pursuant to N.J.S.A. 39:5-30a. The proposed 18-month penalty was mitigated somewhat by completion of a good driver program and the testimony that the young man is now holding down two jobs after his recovery from a serious injury. A one-year suspension sanction sems in accord with the standards set forth in *Cressi v. Parsekian*, 81 N.J. Super 536 (App. Div. 1963) aff'd 43 N.J. 326 (1964).

* * *

It is, therefore, ORDERED that the driving privileges of William J. Haser be suspended for one year and that he pay a $20 restoration fee.

* * *

May 11, 1981 s/NAOMI DOWER-LABASTILLE,
ALJ